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No. 89-939

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

HEALTHAMERICA AND PAMELA MERLE,
Petitioners,
v.
EDWARD MENTON,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

BRIEF OF AMICUS CURIAE ALABAMA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR CERTIORARI

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QUESTION PRESENTED

Amicus curiae submits this brief in support of the petition for certiorari on the following issue:

Whether the Fourteenth Amendment's Due Process clause acts as a check on undue jury discretion to award punitive damages in a civil lawsuit in the absence of any express statutory limit.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF THE AMICUS CURIAE	1
REASONS FOR GRANTING THE WRIT	2
I. THE $1.8 MILLION PUNITIVE DAMAGES AWARD RAISES IMPORTANT FEDERAL QUESTIONS WHICH MUST BE RESOLVED	2
A. The Problem of Punitive Damages in Alabama	3
B. Petitioners' Due Process Argument Was Timely and Properly Raised	7
C. Due Process Checks Undue Jury Discretion to Impose Punitive Damages in the Absence of Any Express Statutory Limitations	10
CONCLUSION	14
APPENDIX	
Representative Listing of Large Punitive Damages Verdicts and Affirmances in Alabama During 1985-1989	1a
A. Non-Wrongful Death Cases	1a
B. Wrongful Death Cases	5a

TABLE OF AUTHORITIES

CASES — Page

Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986) ..... *passim*
Aetna Life Insurance Co. v. Lavoie, 505 So.2d 1050 (1985) 2
Bankers Life & Cas. Co. v. Crenshaw, 486 U.S. 71 (1988) ..... *passim*
Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673 (1930) 10
Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc., [Ms. No. 88-556, June 26, 1989], —— U.S. —— (1989) ..... *passim*
Chicago etc. R. Co. v. Polt, 232 U.S. 165 (1914) 11
Duvall, et al. v. General Motors Corp., et al., Circuit Court of Russell County, Case No. CV-88-190 6
Ex Parte Young, 209 U.S. 123 (1908) 11
Foster v. Industrial Chemicals, Inc., Circuit Court of Jefferson County, Bessemer Division, Case No. CV-88-680 6
Green Oil Co. v. Hornsby, 539 So.2d 218 (Ala. 1989) 5
Hammond v. City of Gadsden, 493 So.2d 1374 (Ala. 1986) 5
Hathorn v. Lovorn, 457 U.S. 255 (1982) 9
Illinois v. Gates, 462 U.S. 213 (1983) 10
Land and Associates Inc. v. Simmons, [Ms. 87-1313, December 22, 1989], —— So.2d —— (Ala. 1989) 6, 8
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 14
Missouri Pacific Ry. Co. v. Humes, 115 U.S. 512 (1885) 11
Missouri Pacific Ry. Co. v. Tucker, 230 U.S. 340 (1913) 11
Pacific Mutual Life Ins. Co. v. Haslip, [Ms. 87-842, Sept. 13, 1989], —— So.2d —— (Ala. 1989); *temporary stay granted*, [No. A-452 December 23, 1989] —— U.S. —— (1989) (Kennedy, J.) 3

TABLE OF AUTHORITIES—Continued

	Page
State Farm Mut. Auto. Ins. Co. v. Robbins, 541 So.2d 478 (Ala. 1989)	9
St. Louis, I. M. & S. R. Co. v. Williams, 251 U.S. 63 (1919)	11
Southwestern T. & T. Co. v. Danaher, 238 U.S. 482 (1914)	11
Trawick v. Michaels of Oregon Co., No. 88-C-413-N (M.D. Ala.)	6
Waters-Pierce Oil Co. v. Texas, 212 U.S. 86 (1909)	10
OTHER AUTHORITIES	
Ala. Code § 6-11-21 (Supp. 1989)	6
Ala. Code § 27-1-17 (1975)	4
Alabama Pattern Jury Instructions 11.03 (1970)	4
Alabama Rules of Civil Procedure, Rule 59	9

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BRIEF OF AMICUS CURIAE ALABAMA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITION FOR CERTIORARI

INTEREST OF THE AMICUS[1]

The Alabama Defense Lawyers Association (hereinafter "ADLA") is a non-profit association of 640 members of the Alabama trial bar who devote a substantial amount of their professional time to representing defendants in civil lawsuits. Organized in 1964, its purposes include promoting improvements in the adversary system of jurisprudence and the administration of justice.

ADLA members collectively represent a substantial number of civil defendants against whom punitive damages are increasingly sought and awarded in Alabama. The ADLA has appeared as *amicus curiae* in numerous cases involving the constitutionality of large punitive

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[1] Pursuant to Rule 36, the parties' letters of consent have been filed with the Clerk.

damage awards, including *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), in which this Court recognized that such questions constitute "important issues which . . . must be resolved."[2]

Despite decisions by this Court questioning the constitutionality of large punitive damage awards, the Alabama Supreme Court has rejected all arguments that the Constitution affords any due process controls on punitive damages in civil cases where there is no fixed statutory limit. Because of the serious and unsettled problem of punitive damages in Alabama, *amicus* is vitally interested in securing plenary review of the question herein presented. In the event the Court declines to dispose of the judgment below pursuant to the ERISA arguments advanced by petitioners, *amicus* urges the Court to grant certiorari to review whether the $1.8 million award violates the Fourteenth Amendment's Due Process Clause.

REASONS FOR GRANTING THE WRIT

I. THE $1.8 MILLION PUNITIVE DAMAGE AWARD RAISES IMPORTANT FEDERAL QUESTIONS WHICH MUST BE RESOLVED.

This case presents an opportunity to address the question unanswered by *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988), and *Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc.*, [Ms., No. 88-556, June 26, 1989], —— U.S. —— (1989): "whether due process acts as a check on undue jury discretion to award punitive damages

[2] The case of *Aetna Life Ins. Co. v. Lavoie* involved a $3.5 million punitive damage award for the alleged bad faith failure to pay $1,650.00 in health insurance benefits. The judgment was fully affirmed by the Alabama Supreme Court in an opinion authored by a justice who simultaneously was a plaintiff in a separate bad faith lawsuit against another insurer. This Court vacated on grounds of judicial disqualification and did not reach the punitive damages issues. On remand, the Alabama Supreme Court remitted the award to $500,000.00. 505 So.2d 1050 (1987).

in the absence of any express statutory limit." Ms. at 18. As the $1.8 million punitive damage award illustrates, the problem of punitive damages is acute in Alabama, where substantial punitive damages have become routinely awarded and affirmed, most notably in the past five years. *See* Appendix *infra*. In the present case, unlike *Browning-Ferris* and *Bankers Life*, the due process argument was timely raised and expressly passed upon by the state trial court. Although *amicus* strongly supports the ERISA arguments asserted by petitioners, this brief addresses the importance of the due process question as it relates to Alabama law and the $1.8 million punitive damage award in this case.

A. The Problem of Punitive Damages in Alabama.

In Alabama, plaintiffs seeking punitive damages are not required to prove intentional or malicious conduct. Such damages may be imposed for wantonness or recklessness, with no greater state of mind requirement. Moreover, in wrongful death cases, in which compensatory damages are not available under Alabama law, substantial punitive damages can be and often are imposed upon proof of nothing more than ordinary negligence.

In addition, punitive damages may be awarded vicariously for the unauthorized acts of a defendant's agent, without any additional requirement of knowledge or fault on the part of the principal. *See, e.g., Pacific Mutual Life Ins. Co. v. Haslip*, [Ms. 87-842, Sept. 13, 1989], —— So.2d —— (Ala. 1989); *temporary stay granted*, [Ms. A-452 December 23, 1989], —— U.S. —— (1989 (Kennedy, J.). Punitive damages are paid entirely to the plaintiff, subject to attorney fees, on which there is no limitation or sliding scale. Alabama law further forbids apportionment of punitive damages among multiple defendants according to their respective wrongdoing. Punishment primarily accorded to one defendant's conduct may be enforced against another defendant under joint and several liability.

Statistics are unavailable but *amicus* represents that, as a result of these circumstances, a vast majority of civil tort actions filed in Alabama now include claims for punitive damages. There occasionally are legislative remedies prescribing the amount of damages which may be awarded due to the alleged wrongful conduct, e.g., as in this case, the failure to pay health insurance benefits.[3] However, the Alabama Supreme Court has never limited plaintiffs' recovery to the statutorily prescribed amount. Instead, Alabama trial courts generally follow the *Alabama Pattern Jury Instructions*, which addresses the amount of punitive damages in a single sentence, as follows:

> Should you award punitive damages, in fixing the amount, you must take into consideration the character and degree of the wrong as shown by the evidence in this case, and the necessity of preventing similar wrongs.

Alabama Pattern Jury Instructions 11.03 (1970). The jury then uses its discretion, based upon the evidence it has just heard, in assessing the amount of punitive damages. The hearing is not bifurcated, and the defendant's financial condition is not disclosed to the jury. However, plaintiffs' counsel commonly asks the jury to award punitive damages so substantial as to hurt the defendant financially and 'send a message' to other would-be tortfeasors in the state and/or nation through the news media. As Justice Brennan noted in *Browning-Ferris* regarding a jury instruction similar to the above, "guidance like this is scarcely better than no guidance at all." 109 S.Ct. 2923.

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[3] Prior to the Alabama Supreme Court's recognizing a common law cause of action for the tort of bad faith, for which punitive damages are recoverable, the 1980 Alabama Legislature enacted a statutory penalty in the amount of 1.5 percent per month against insurance companies for wrongfully withheld health insurance benefits. Ala. Code § 27-1-17 (1975). That amount in this case, for the 29-month period before trial, would total $1,049.22.

In Alabama, punitive damages have no objective upper limit, legislative or otherwise, of which the jury is made aware. As a result, punitive damage verdicts hugely disproportionate to the actual injury are not uncommon. A representative listing of fifty Alabama cases involving massive punitive damage verdicts, in the last five years alone, is reproduced in the Appendix, *infra*. As these cases illustrate, punitive damage verdicts fluctuate wildly for the same or similar offense and without regard to the amount of actual damages. Neither do the variations reflect a consistent scale of conduct.

In response to proliferating challenges to the excessiveness of jury awards, the Alabama Supreme Court has articulated a list of subjective factors to be considered by trial and appellate courts in analyzing the excessiveness of a jury award.[4] However, as the Appendix vividly illustrates, judicial oversight and review has not cured these defects because, without objective standards and limits, reviewing courts have no way of determining whether the jury adhered to any particular criteria. Similarly, requiring a "reasonable relationship" to actual damages affords no cure because any ratio of punitive to actual damages can and has been found to be reasonable. Judicial review of such awards, under present law, merely transfers subjective discretion to the reviewing courts without any objective limit on punishment.

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[4] *See Green Oil Co. v. Hornsby*, 539 So.2d 218 (Ala. 1989); *Hammond v. City of Gadsden*, 493 So.2d 1374 (Ala. 1986). The factors to be considered by the trial judge in determining whether the punitive damages award is excessive or inadequate include: (1) the award should bear a reasonable relationship to the harm, (2) the degree of reprehensible conduct should be considered, (3) any profit from the wrongful conduct should be removed, (4) the defendant's financial condition is relevant, (5) litigation costs should be included, (6) criminal sanctions already imposed should be considered, and (7) other civil actions against the same defendant for the same conduct should mitigate. *Green Oil Co. v. Hornsby*, 539 So.2d at 223-24.

Although not applicable to the present case, the 1987 Alabama Legislature enacted a "tort reform" package which included a statute limiting punitive damages judgments in some cases to $250,000. Ala. Code § 6-11-21 (Supp. 1989). However, the amount of the cap cannot be disclosed to the jury in assessing punitive damages and, thus, does not prevent a discretionary jury award in excess of $250,000. Where the jury does award more than $250,000, a plaintiff may argue that the case falls within one of the exceptions to the cap. Furthermore, the $250,000 limitation does not apply in actions for defamation or wrongful death, or cases where plaintiff proves the defendant's conduct was part of a "pattern of practice of intentional wrongful conduct." The breadth of those exceptions has not yet been construed by the Alabama Supreme Court. Equally as important, the validity of the cap itself is the subject of a fierce attack under the Alabama Constitution.[5]

Consequently, the problem of punitive damages exemplified by the $1.8 million verdict in this case remains unsettled. On several occasions the Alabama Supreme Court has considered, but rejected, federal constitutional challenges to large punitive damages awards, including the due process argument advanced here. Most recently, in *Land and Associates, Inc. v. Simmons*, [Ms. 87-1313 December 22, 1989] —— So.2d —— (Ala. 1989), the

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[5] *Trawick v. Michaels of Oregon Co.*, No. 88-C-413-N (M.D. Ala.). In *Trawick* a federal jury assessed $1 million in punitive damages for the alleged wantonness of a manufacturer of hunting accessories. Plaintiffs challenged the validity of the $250,000 tort reform "cap" and, in the alternative, asserted the "pattern or practice" exception to the cap on grounds that the product is mass produced. Those questions have been certified by the federal district court to the Alabama Supreme Court, prior to appeal of the merits, and the case is now pending. Similar challenges are pending in various state court cases. *See, e.g., Duvall, et al. v. General Motors Corp., et al.*, Circuit Court of Russell County, Case No. CV-88-190; *Foster v. Industrial Chemicals, Inc.*, Circuit Court of Jefferson County, Bessemer Division, Case No. CV-88-680.

Alabama Supreme Court expressly rejected a defendant's federal constitutional argument as follows:

> The defendants next contest the punitive damages aspect of the case. The defendants argue that the punitive damages award in this case [$2.5 million remitted to $600,000] is unconstitutional and violates the Fifth, Eighth and Fourteenth Amendments to the United States Constitution . . . . The Supreme Court of the United States has recently held in *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.* that the Excessive Fines Clause of the Eighth Amendment does not apply to punitive damage awards in cases between private parties. *Furthermore, this Court has consistently rejected the same arguments made by the defendants and has upheld the constitutionality of punitive damages.*

Ms. at 16 (citations omitted). The Alabama Supreme Court, instead, has come to rely upon the aforementioned subjective review standards for analyzing the excessiveness of an award after the verdict is rendered. No objective measures have been adopted to check the jury's unrestrained exercise of discretion. The appellate court must make a subjective *ad hoc* analysis of each verdict. If any application of federal constitutional principles is to be made in requiring an objective standard or limit, it must come from this Court.

B. Petitioners' Due Process Argument Was Timely and Properly Raised.

In recent cases involving punitive damages, this Court has declined to address the Fourteenth Amendment due process question because it heretofore was not adequately raised in the lower courts. That procedural impediment does not exist here.

After the jury verdict of $1.8 million, petitioners filed a timely post-trial motion challenging, *inter alia*, the excessiveness of the punitive damages verdict. Petitioners'

motion, containing 44 grounds for relief, included the following:

> 25. The jury's punitive damages award violates the Fourteenth Amendment . . . of the United States Constitution.

The trial court expressly considered and overruled petitioners' federal due process challenge as follows:

> [T]he Court has considered defendants' claims that the imposition of punitive damages, both generally under Alabama law and specifically in the amount and as returned by the jury under the facts of this case, is unconstitutional under the Alabama as well as the United States Constitutions (particularly, . . . the Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment . . .). *Although these arguments were timely raised and effectively presented*, the Court is unpersuaded by such arguments and therefore holds that the imposition of punitive damages, both generally under Alabama law and specifically in the amount as returned by the jury under the facts of this case, is constitutional under both the State and Federal Constitutions.

Pet. at 48a (emphasis added). Despite this express holding by the trial court, the Alabama Supreme Court avoided ruling on the merits of the due process issue by citing the "not raised below" rule. Pet. at 25a. It held, in effect, that a challenge to the excessiveness of the punitive damages award on federal constitutional grounds, although asserted in a timely motion for new trial or remittitur, was too late.[6] Such holding was contrary to both the Alabama Rules of Civil Procedure and

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[6] The Alabama Supreme Court since has made it clear, citing the instant case *as precedent*, that it also rejects on the merits any argument that the federal constitution furnishes checks on unrestrained punitive damages awards. *See Land & Assoc., Inc. v. Simmons, supra.*

to recent pronouncements by the Alabama Supreme Court itself.

The Alabama Rules of Civil Procedure provide that a motion for new trial or remittitur, challenging the amount of the jury verdict, shall be filed "not later than 30 days *after* the entry of the judgment." *Ala.R.Civ. Pro.* Rule 59(b) and (f) (emphasis added). Indeed, it seems self-evident that petitioners' challenge to the size of the punitive damages verdict never ripened until the jury, in fact, had awarded $1.8 million. Petitioners thereafter raised their due process challenge at the first opportunity, through a timely motion for judgment notwithstanding the verdict or new trial. The trial court expressly acknowledged the motion's timeliness and overruled petitioners' due process argument on the merits.

Moreover, the Alabama Supreme Court, contrary to its holding in this case, has always observed the rule that challenges to the size of a punitive damages award are properly raised in a motion for new trial. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Robbins*, 541 So.2d 478 (Ala. 1989). In *Robbins* the Alabama Supreme Court, presented with a nearly identical due process challenge to a $5 million punitive damages award, stated: "The . . . issue is whether excessive damages were awarded. *The question of excessive damages is raised by a motion for a new trial or remittitur.*" 541 So.2d at 478, citing *Ala.R.Civ.Pro.* Rule 59(f) (other citations omitted) (emphasis added).

The failure of the Alabama Supreme Court to evenhandedly apply that rule reinforces petitioners' assertion that the federal claim was adequately raised for purposes of this Court's review. The principle laid down in *Hathorn v. Lovorn* is particularly apt: "State courts may not avoid deciding federal issues by invoking procedural rules they do not apply evenhandedly to all similar claims." 457 U.S. 255, 263 (1982). In this case, there is

no procedural rule requiring petitioners to challenge the size of the punitive damages award before the verdict; indeed both the rule and the consistent practice of the Alabama Supreme Court are to the contrary.

For purposes of federal judicial review, petitioners' assertion of the due process argument in the above manner was sufficient to preserve that question for review under the decisions of this Court. *See Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 678 (1930) (federal claim was timely where raised by petitioners at the first opportunity). The federal due process claim was spefically raised at the first opportunity, and both the trial and appellate courts were given a full opportunity to consider the due process challenge to the size of the award. *See Illinois v. Gates*, 462 U.S. 213, 221 (1983). The procedural impediments in *Bankers Life* and *Browning-Ferris* therefore are not present here.

C. Due Process Checks Undue Jury Discretion to Impose Punitive Damages in the Absence of Any Express Statutory Limitations.

This Court is well familiar with the proposition that due process prohibits unrestrained punitive damage verdicts in civil cases. That argument was briefed and argued by appellants and *amici curiae* in *Bankers Life & Cas. Co. v. Crenshaw*, *supra*, and *Aetna Life Ins. Co. v. Lavoie*, *supra*, and is equally relevant here. A parallel argument under the Eighth Amendment's Excessive Fines Clause was advanced in *Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc.*, *supra*.

As Justice Brennan recognized in *Browning-Ferris*, several decisions by this Court indicate that even where punitive damages are limited by statute, due process forbids damages that are grossly excessive or severely disproportionate to the offense. Ms. at 1 (Brennan, J., concurring), citing *Waters-Pierce Oil Co. v. Texas*, 212 U.S.

86, 111 (1909); *St. Louis, I. M. & S. R. Co. v. Williams*, 251 U.S. 63, 66-67 (1919).

In *Southwestern T & T. Co. v. Danaher*, 238 U.S. 482 (1914), the Court voided a punitive damages jury award of $6,300 as "so plainly arbitrary and oppressive as to be nothing short of taking of [defendant's] property without due process of law." *Id.* at 491. *See-also, Chicago etc. R. Co. v. Polt*, 232 U.S. 165 (1914); *Missouri Pacific Ry. Co. v. Tucker*, 230 U.S 340 (1913); *Ex Parte Young*, 209 U.S. 123 (1908); *Missouri Pacific Ry. Co. v. Humes*, 115 U.S. 512, 522-23 (1885). As these cases illustrate, due process controls over arbitrary and excessive punishments are not new. They have atrophied, however, through a trend, notably present in Alabama, toward passive jury deference.

The proposition that due process prohibits unrestrained punitive damage awards has been reinforced in recent opinions by Justices of this Court. Beginning with *Aetna Life Ins. Co. v. Lavoie, supra*, Chief Justice Burger, writing for a unanimous Court, commented on the due process question as being an "important [issue] which, in an appropriate setting, must be resolved." 475 U.S. at 828-29. Subsequently Justice O'Connor, joined by Justice Scalia, observed in *Bankers Life & Cas. Co. v. Crenshaw, supra*, that there is reason to think due process may forbid arbitrary and unrestrained punitive damages awards. 100 L.Ed.2d at 77. (O'Connor, J., concurring in part).

Most recently, in *Browning-Ferris Indus., Inc. v. Kelco Disposal, Inc., supra*, this Court acknowledged there is some authority for the application of the Due Process Clause to limit the size of civil punitive damage awards made within statutory limits. Ms. at 18. The Court, however, stopped short of answering the question presented in this case: "Whether due process acts as a check on undue jury discretion to award punitive damages in the absence of any express statutory limit." *Id.* Justices

Brennan and Marshall concurred, suggesting the Court would be even "less indulgent" of a punitive damage award made without the benefit of objective legislative limits. Ms. at 1 (Brennan, J., concurring). Justice O'Connor and Justice Stevens supported the Eighth Amendment Excessive Fines Clause argument advanced in that case, which is subsumed under the due process argument asserted here. Ms. at 1. (O'Connor, J., concurring and dissenting).

In the present case, the $1.8 million punitive award exceeds the measure of damages prescribed by the Alabama Legislature by 1,700 times.[7] The ratio of compensatory to punitive damages exceeds that in *Bankers Life, supra*, by factor of more than 650 times.[8] Furthermore, this award was the product of state laws as equally devoid of any objective limitations on a jury's discretion to determine the amount of punitive damages as those involved in *Browning-Ferris* and *Bankers Life*. Consideration of due process principles counsels that states must prescribe, according to the wrong committed, objective upper limits on the amount of punitive damages that may be awarded in a civil case.

Amicus submits the Fourteenth Amendment requires the imposition of upper limits on the *amount* of punitive damages which may be awarded, in advance of the trial. Any criminal procedure whereby jurors were given unrestrained discretion to impose unlimited punishment through fines or imprisonment surely would be regarded as barbaric. In effect, however, that is essentially the *status quo* for non-criminal defendants in Alabama,

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[7] *See* note 3, *supra*.

[8] In *Bankers Life & Cas. Co. v. Crenshaw, supra*, the jury awarded $20,000 in contract damages plus $1.6 million in punitive damages, a ratio of 80:1. The punitive award in the present case totalled more than $1,797,000, nearly 750 times the actual damages of $2,412.00 in unpaid contract benefits.

where juries are told, in the heat of the moment, to do what they think is best in determining an amount of punitive damages based upon evidence they have just heard. Policy decisions regarding the amount of punishment for given offenses ought to be made by the legislature in a cooler and more reasoned setting, not on an *ad hoc* basis by jurors having vastly different personalities, backgrounds, temperaments and societal concerns.

When actionable harm has resulted that cannot be rectified with money, there is an element of frustration and inclination toward vengeance. Such feelings readily become fury, which produces arbitrary and irrational results. Large corporations and insurance companies, perceived to have substantial resources, are inevitably targets for vengeance and frustrated fury. *See* Appendix, *infra*. The only means available for a jury to express its feelings of disapproval is to award a huge punitive damages verdict, as it did in this case. Such arbitrary and irrational actions, rendered in the heat of the moment without any objective limits, do not satisfy due process of law.

As long recognized in the criminal law, due process imposes the rule of law upon the impulse towards vengeance. It requires, at a minimum, objective upper limits on punitive damages awards, either in the form of a dollar limit, or a maximum ratio of punitive damages to actual damages, or both. The question not reached in *Bankers Life* and *Browning-Ferris* must be answered in the affirmative here: due process *does* act as a check on undue jury discretion to award punitive damages in the absence of any express statutory limit.

CONCLUSION

A resolution of the due process question is vitally important to Alabama civil defendants "hoping to protect their property." [9] In this case, the due process argument was squarely raised and passed upon in the state trial court and argued to the Alabama Supreme Court. Should this Court decline to review and vacate the judgment below on the alternate grounds advanced in the petition, *amicus* urges the Court to grant certiorari and set this case for oral argument on whether the $1,797,000 punitive damage award satisfies due process.

Respectfully submitted,

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[9] *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982) (due process protects "civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances").

APPENDIX

APPENDIX

REPRESENTATIVE LISTING OF LARGE PUNITIVE DAMAGES VERDICTS AND AFFIRMANCES IN ALABAMA DURING 1985-1989 [1]

A. *TORTS INVOLVING PUNITIVE DAMAGES* (non-wrongful death)

Holt v. State Farm Mut. Auto. Ins. Co., Circuit Court of Clay County CV-82-060 (1985): $25 million punitive damages for fraud involving uninsured motorist stacking. Settled post-trial.

McMillian v. Massey Ferguson, Inc., et al., Circuit Court of Mobile County CV-82-686 (1985): $10.5 million general verdict which included $584,000 actual damages for partial leg amputation caused by alleged wantonness in design and manufacture of grain auger. Settled pending appeal.

Sigafoose v. Babson Brothers Co., Circuit Court of Baldwin County CV-86-573 (1989): $10 million punitive damages for fraud involving $21,000 compensatory claim. Settled post-trial.

Super Valu Stores, Inc. v. Peterson, 506 So.2d 317 (Ala. 1987): $5 million punitive damages for breach of contract and fraud in employment relationship. Affirmed by Alabama Supreme Court.

Robbins v. State Farm Mut. Auto. Ins. Co., 541 So.2d 477 (Ala. 1989): $5 million punitive damages for bad faith

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[1] This table was prepared from *amicus* counsel's limited research and inquiries, and is believed to contain only a partial listing of large verdicts and affirmances for the given time period. There presently are no statewide records or databases maintained in Alabama to record the amounts of such verdicts, so this is the only available means of gathering such information. Should the Court grant certiorari on this issue, *amicus* will develop a comprehensive list of such awards for the Court's review.

and fraud involving $700 disability claim. Remitted to $500,000, affirmed by Alabama Supreme Court.

Turner v. Southern Life & Health Ins. Co., Circuit Court of Macon County (1988): $5 million punitive damages for bad faith and fraud involving $1,000 death benefit. Remitted to $500,000. Appeal pending.

Pasquale Food Co. v. Shakey's Inc., Circuit Court of Jefferson County (1985): $3 million punitive damages for intentional interference with business relationship and improper acquisition of trade secrets.

United Serv. Auto. Ass'n v. Wade, 544 So.2d 906 (Ala. 1989): $3.5 million non-jury punitive damages verdict for bad faith remitted to $2.5 million. Compensatory damages of $166,795 (plus $21,962.21 interest) on contract count. Affirmed by Alabama Supreme Court.

Aetna Life Ins. Co. v. Lavoie, 505 So.2d 1050 (Ala. 1987): $3.5 million punitive damages for bad faith refusal to pay $1,650 medical claim. Initially affirmed by Alabama Supreme Court, then vacated on appeal to U.S. Supreme Court, and thereafter remitted to $500,000 by Alabama Supreme Court and affirmed.

Lindblom v. Intercontinental Life Insurance Co., Jefferson County Circuit Court CV-86-7156 (1989): $3 million punitive damages for bad faith and fraud involving $10,000 death benefit. Appeal pending.

Ford v. Colonial Mortgage Co., Russell County Circuit Court (1989): $3 million punitive damages for fraudulent breach of residential home loan commitment. Post-trial motion pending.

American Pioneer Life Ins. Co. v. Sandlin, 470 So.2d 657 (Ala. 1985): $3 million punitive damages for fraud involving $100,000 compensatory damages. Affirmed by Alabama Supreme Court.

Land & Associates, Inc. v. Simmons, [Ms. 87-1313, December 22, 1989], —— So.2d —— (Ala. 1989): $2.5 mil-

lion punitive damages for fraud involving $10,000 in life insurance proceeds. Remitted to $600,000. Affirmed by Alabama Supreme Court.

HealthAmerica, et al. v. Menton, 551 So.2d 235 (Ala. 1989): $1.8 million punitive damages for fraud involving $2,400 claim for medical benefits. Affirmed by Alabama Supreme Court.

Phillips v. United American Ins. Co., Circuit Court of Etowah County (1987): $1.8 million punitive damages for bad faith and fraud involving $264 unpaid balanee on medical claim. Settled post-trial.

Walls v. Colonial Mortgage Co., Russell County Circuit Court, CV-87-194, (1988): $1.7 million punitive damages for fraud involving breach of residential home loan commitment. Settled pending appeal.

Nationwide Mut. Ins. Co. v. Clay, 469 So.2d 533 (Ala. 1985): $1.25 million punitive damages for bad faith involving $40,000 disability claim. Affirmed by Alabama Supreme Court.

Pacific Mutual Life Ins. Co. v. Haslip, [Ms. 87-842 Sept. 13, 1989] —— So.2d —— (Ala. 1989): $1 million punitive damages for fraud. Affirmed by Alabama Supreme Court.

Blackburn, et al. v. Altus Bank, Circuit Court of Mobile County, CV-89-2163 (1989): $1 million punitive damages ($500,000 per two plaintiffs) for fraud. Post-trial motion pending.

Trawick v. Michaels of Oregon Co., U.S. District Court for Middle District of Alabama, 88-C-413-N (December 21, 1988): $1 million punitive damages for products liability involving rifle swivel. Post-trial motions pending.

United American Ins. Co. v. Brumley, 542 So.2d 1231 (Ala. 1989): $1 million punitive damages for bad faith involving compensatory damages of $5,000. Affirmed by Alabama Supreme Court.

North Carolina Mut. Life Ins. Co. v. Holley, 533 So.2d 497 (Ala. 1987): $1 million punitive damages for bad faith, remitted to $500,000 by Alabama Supreme Court.

AmSouth Bank v. Speigner, 505 So.2d 1030 (Ala. 1986): $1 million punitive damages for wrongful completion, cashing of $25,000 check. Settled on appeal.

Thomas v. Principal Mut. Ins. Co., Mobile County Circuit Court No. CV-87-2561 (1989): $750,000 punitive damages for bad faith failure to pay $1,000 death benefit. Set aside by trial court on defendant's motion for J.N.O.V. Appeal pending.

Watson, Watson & Rutland v. Rosser Fabrap Int'l, Inc., U.S. District Court for Middle District of Alabama, 88-H-1292-N (M.D. Ala. 1989): $700,000 punitive damages for intentional interference with business relationship. Post-trial motion pending.

L. W. Johnson & Assoc. v. Rivers Constr. Co., 532 So.2d 618 (Ala. 1988): $500,000 punitive damages in fraud action by construction company against developer involving $165,000 compensatory damages. Affirmed by Alabama Supreme Court.

Vintage Enterprises v. Jay, 547 So.2d 1169 (Ala. 1989): $500,000 punitive damages, $20,000 compensatory, relating to sale, order, delivery of mobile home; fraud, wantonness, negligence, warranty, and Magnuson-Moss theories. Affirmed by Alabama Supreme Court.

State Farm Fire & Cas. Ins. Co. v. Lynn, 516 So.2d 1373 (Ala. 1987): $250,000 punitive damages, $25,000 compensatory, for fraud. Alabama Supreme Court ordered $4,078 remittitur of compensatory award and affirmed.

Wal-Mart Stores, Inc. v. Jones, 533 So.2d 551 (Ala. 1988): $200,000 punitive damages for false imprisonment. Affirmed by Alabama Supreme Court.

Kabel v. Brady, 519 So.2d 912 (Ala. 1987): $162,500 punitive damages, $609 compensatory, where chiropractor

fraudulently represented that Medicare would cover services performed. Affirmed by Alabama Supreme Court.

Dependable Ins. Co. v. Kirkpatrick, 513 So.2d 804 (Ala. 1987): $150,000 punitive damages for conversion of vacation cabin and its contents. Affirmed by Alabama Supreme Court.

Cooper Chevrolet, Inc. v. Chambers, 529 So.2d 913 (Ala. 1985): $150,000 punitive damages for intentional fraud in sale of used car. Affirmed by Alabama Supreme Court.

Hargrove v. Cantrell, 547 So.2d 488 (Ala. 1989): $127,717 punitive damages, $23,134 compensatory damages, for odometer rollback. Affirmed by Alabama Supreme Court.

Green Oil Co. v. Hornsby, 539 So.2d 218 (Ala. 1989): $150,000 punitive damages, $14,704.06 compensatory damages, for fraud. Punitive damages remitted to $25,000, affirmed by Alabama Supreme Court.

Mobile Dodge, Inc. v. Alford, 487 So.2d 866 (Ala. 1986): $125,000 punitive and compensatory damages (general verdict) for fraud by used car dealer. Affirmed by Alabama Supreme Court.

B. *WRONGFUL DEATH CASES* [2]

Hicks v. Ireland, Circuit Court of Montgomery County (1985): $25 million punitive damages for wrongful death, improper release of mentally ill patient who committed murder. Settled prior to appeal.

Whitt v. Burlington Northern Railroad, Circuit Court of Walker County (1988): $15 million punitive damages for

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[2] Under Alabama law, *only* punitive damages may be recovered in wrongful death actions. Although a separate category has been assigned here, the pattern jury instruction for punitive damages in wrongful death cases is substantially the same as in non-death cases. For purposes of evaluating due process limits on unrestrained punitive damages awards, the analysis is essentially the same.

wrongful death, railroad crossing accident. Appeal pending.

Thornton v. Knollwood Park Hospital, Mobile County Circuit Court Case No. CV-85-1275 (1989). $5 million punitive damages for wrongful death involving alleged failure to diagnose baby's spinal meningitis. Settled on appeal.

Industrial Chem. & Fiberglass Corp. v. Chandler, 547 So.2d 812 (Ala. 1988): $5 million punitive damages ($2.5 million each) for two deaths involving chemical tank burns. Affirmed by Alabama Supreme Court.

May v. Lloyd Noland Foundation, Jefferson County Circuit Court, (1985): $4 million punitive damages for wrongful death of baby. Settled post-trial.

General Motors Corp. v. Edwards, 482 So.2d 1176 (Ala. 1985): $4 million punitive damages ($2 million each) for two uncrashworthiness deaths. Remitted by trial court to $1.4 million each, which the Alabama Supreme Court affirmed.

Black Belt Wood Co. v. Sessions, 514 So.2d 1249 (Ala. 1986): $3.5 million punitive damages for wrongful death involving log truck improperly loaded. Affirmed by Alabama Supreme Court.

Olympia Spa v. Johnson, 547 So.2d 80 (Ala. 1989): $3 million punitive damages for wrongful death involving steam room scalding. Affirmed by Alabama Supreme Court.

Clardy v. Sanders, 551 So.2d 1057 (Ala. 1989): $2.75 million punitive damages for wrongful death in auto accident. Affirmed by Alabama Supreme Court.

Central Alabama Elec. Coop. v. Tapley, 546 So.2d 371 (Ala. 1989): $1 million punitive damages for wrongful death involving dump truck bed contacting power line. Affirmed by Alabama Supreme Court.

Alabama Power Co. v. Cantrell, 507 So.2d 1295 (Ala. 1986): $1 million punitive damages for wrongful death where decedent touched TV antenna to uninsulated power wires. Affirmed by Alabama Supreme Court.

Alabama Power Co. v. Courtney, 539 So.2d 170 (Ala. 1989): $750,000 punitive damages for wrongful death in auto accident. Affirmed by Alabama Supreme Court.

Consolidated Freightways v. Pacheco-Rivera, 524 So.2d 346 (Ala. 1988): $525,000 punitive damages for wrongful death in auto accident. Affirmed by Alabama Supreme Court.

Williams v. Price, 514 So.2d 1267 (Ala. 1986): $500,000 punitive damages for wrongful death involving drunk driving auto accident. Affirmed by Alabama Supreme Court.

Alabama Power Co. v. Capps, 519 So.2d 1328 (Ala. 1988): $500,000 punitive damages for wrongful death of dump truck driver killed when truck hit low lines. Affirmed by Alabama Supreme Court.